In the High Court of Judicature at Madras

Dated:13.09.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM

Civil Revision Petition (PD) Nos.446 & 447 of 2006
and C.M.P.Nos.3860 & 3861 of 2006

Management of Tulya
Alloy Castings
Limited. .. Petitioner in both the CRPs

vs.

A.M. Dhandapani .. Respondent in both the CRPs

Revision Petitions filed under Article 227 of the Constitution of India against the petition and order dated 24.01.2006 passed in Diary No.99 of 2006 in I.D.No.278 of 1989 and C.P.No.224 of 1989 and Diary No.100 of 2006 in C.P.No.545 of 2002 on the file of Labour Judge, Coimbatore.

For petitioner : Mrs. Nalini Chidambaram, Sr.Counsel
for Mr. M. Kamalanathan

For respondent : Mr. R. Neelakandan

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COMMON ORDER

Tulya Alloy Castings Limited, aggrieved by the order of the Labour Court, Coimbatore, dated 24.1.2006 raising the question of maintainability of the review petitions, has filed the above revisions under Article 227 of the Constitution of India.

2. Brief facts are as follows:

(a) The first respondent in both revisions, one A.M. Dhandapani was a worker of the petitioner, Tulya Alloy Castings Limited. Subsequently, he was dismissed from service on 08.10.1988. By common award dated 25.09.1992, passed by the Labour Court, Coimbatore in I.D.No.278 of 1989 and C.P.No.224 of 1989, the Labour Court declared his dismissal from service as illegal and ordered re-instatement with continuity of service and full backwages and further directed to pay Rs.870/- as bonus to him for the year 1987-1988. The said common award was published in the Government gazette dated 03.12.1992.

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(b) Against the said common award, the petitioner Management filed Writ Petition Nos.3215 and 3216 of 1993 before this Court. This Court remanded the matter back to the file of Labour Court for fresh disposal. The Labour Court by award dated 26.09.2001, again directed the Management to re-instate him with continuity of service and full backwages. The second award was also published in the Government gazette on 26.09.2001 and the same was communicated by the Department of Labour and Employment, Government of Tamil Nadu in letter dated 11.01.2002 to the Management.

(c) The workman filed claim petition in C.P.No.545 of 2002 before the Labour Court, Coimbatore for direction to the employer to pay a sum of Rs.4,96,886/- for the period from October 1988 to May, 2002 along with interest at 15%. The Management by filing counter affidavit contested the claim petition. The Labour Court by order dated 06.04.2004, allowed the claim petition and declared that the workman is entitled to receive the amount as prayed for in the petition and directed the Management to pay Rs.4,96,886/- within two months from the date of order. Since the employer deliberately failed to comply with the award, the workman was constrained to sent an application on 30.05.2005 as per Section 33 C-1 of the Industrial Disputes Act, 1947 (in short "the Act") requesting to issue recovery certificate for the amount of Rs.4,96,886/- payable to him by his employer.

(d) By proceedings dated 19.10.2005, the Government has issued recovery certificate as per Section 33-C(1) of the Act, vide Government Order (D) No.1206 dated 19.10.2005 and thereby the Deputy Secretary to Government, Department of Labour and Employment asked the District Collector of Coimbatore District to recover the amount of Rs.4,96,886/- from the management as arrears of land revenue and to give the same to him. The Collector was also directed to submit his report to the Government. The said communication was sent to the District Collector, to the Management and to the workman.

(e) In view of the inaction on the part of the Collector, the workman made a representation on 05.12.2005 to execute the order of recovery. On receipt of the said representation, the District Collector sent the same to the Tahsildar, Coimbatore (North) to take action. However, no action has been taken. Hence, the workman made representations to the Tahsildar on 27.12.2005 and 07.02.2006. Even after the said representations, the Tahsildar did not take any action. In view of the same, the workman filed W.P.No.10240 of 2006 before this Court and by order dated 13.04.2006, notice was sent to the Tahsildar to comply with the order immediately to avoid contempt. Since there was no response, the workman has filed contempt application against

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the Tahsildar. At this juncture, the Management filed I.A. Diary Nos.99 and 100 of 2006, seeking to review the orders in I.D.No.278 of 1989 and C.P.No.224 of 1989. The Labour Court, Coimbatore, by the impugned order questioned the maintainability of the above review petitions. Hence, the Management has filed the present revisions under Article 227 of the Constitution of India.

3. Heard Mrs. Nalini Chidambaram, learned senior counsel for the petitioner and Mr. R. Neelakandan, learned counsel for the respondent.

4. Mrs. Nalini Chidambaram, learned senior counsel for the petitioner contended that inasmuch as the Labour Court is being presided over by a District Judge, it is a Court vested with inherent powers like a civil Court and the review petitions filed by the Management are maintainable. She further contended that the Labour Court ought to have numbered the review petitions and afforded opportunity to the Management to put forth certain valid points. In support of her argument, she relied on a judgment of Delhi High Court in the case of Umed Singh vs. Ashok Kotel reported in 2004 (2) L.L.N. 1000.

5. On the other hand, Mr. R. Neelakandan, learned counsel for the respondent workman submitted that in view of the conduct of the Management and of the fact that after passing of award on two occasions, the same having been published in the Government gazette and that the orders were passed by the Government for recovery of the amount through the District Collector/Tahsildar, the review petitions are not maintainable and in any event, the Management has not made out a case for review.

6. We have verified the relevant materials and considered the rival contentions.

7. The point for consideration is, whether the review petitions are maintainable and if it is so, whether the Management has made out a case for review?

8. In Umed Singh vs. Ashok Kotel [2004 (2) L.L.N. 1000 (cited supra)], the workman challenged the order passed by the Presiding Officer, Labour Court, Delhi, dismissing his review application on the ground that the award dated 22.10.2001 had already been passed and published. Contending that review petition is maintainable even after the publication of the award before the Labour Court / Industrial Tribunal, the petitioner therein relied upon the judgment of the Supreme Court in Grindlays Bank Ltd., vs. Central Government Industrial Tribunal and others reported in 1981 (1) L.L.N. 196 and Anil Sood vs. Presiding Officer, Labour Court II (2001 (2) L.L.N. 611). In view of the law laid down by the Supreme Court, the learned single Judge of Delhi High Court set

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aside the order of the Labour Court and directed the Labour Court to dispose of the review application on merits. The judgment of the Supreme court referred above shows that the review petition is maintainable even after publication of the award before the Labour Court or Industrial Tribunal.

9. The learned counsel for the workman heavily relied on Three Judge Bench decision of the Supreme Court in the case of K.M.E. Union vs. Birla Cotton Spinning & Weaving Mills Ltd., reported in 2005 LAB.I.C. 1604. In that case, before the Supreme Court two issues arise for consideration:

(i) Whether the Tribunal had jurisdiction to recall its earlier order which amounted virtually to a review of its earlier order? And

(ii) Whether the Tribunal had no jurisdiction to entertain the application for recall as it had become functus officio?

The Hon'ble Supreme Court, answered the first issue in favour of the management and the second issue in favour of the workers Union. It is seen from the order of the Supreme court that as on September 7, 1987, the award had not become enforceable and therefore on that date the Tribunal had jurisdiction over the disputes referred to for adjudication. In such circumstances, their Lordships held that it had the power to entertain an application in connection with such dispute and concluded that the order of re-call passed by the Tribunal on February 19, 1990 cannot be assailed on the ground that the Tribunal had become functus officio. The further discussion and the following conclusion are relevant.

> "18. It was, therefore, submitted before us relying upon Grindlays bank Ltd. vs. Central Government Industrial Tribunal and others (supra) that even in the absence of an express power of review, the Tribunal had the power to review its order if some illegality was pointed out. The submission must be rejected as misconceived. The submission does not take notice of the difference between a procedural review and review on merits. This Court in Grindlays Bank Ltd. v. Central Government Industrial Tribunal and others (supra) clearly highlighted this distinction when it observed:-
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> "Furthermore, different considerations arise on review. The expression 'review' is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it, and 92) a review on merits

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when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the later sense that the court in Patel Narshi Thakershi case (AIR 1970 SC 1273) held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debita justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal."

19. Applying these principles it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault

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> of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd. v. Central Government Industrial Tribunal and others (Supra), it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be re-heard and decided again.
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> 20. The facts of the instant case are quite different. The recall of the Award of the Tribunal was sought not on the ground that in passing the Award the Tribunal had committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the Award, but on the ground that some matters which ought to have been considered by the Tribunal were not duly considered. Apparently the recall or review sought was not a procedural review, but a review on merits. Such a review was not permissible in the absence of a provision in the Act conferring the power of review on the Tribunal either expressly or by necessary implication. "

10. It is useful to point out that the Hon'ble Three Judge Bench considered the earlier decision of the Supreme Court in Greendlays Bank Ltd., Vs. Central Government Industrial Tribunal and others (1981 LAB.I.C. 155:AIR 1981 SC 606). The ultimate conclusion in para 20 of the order of the Supreme Court makes it clear that if there is a procedural error, the review is permissible even after publication of the award in the gazette, but recall or review on merits is not permissible after publication of the award in the official gazette.(Emphasis supplied)

11. As observed earlier, the common award was passed as early as on 25.09.1992 and the same was also published in the Government gazette on 03.12.1992. At the instance of this Court and direction, the second award was passed on 26.09.2001, which was also published in the Government gazette dated 26.09.2001 and communicated to the Management by the Department of Labour and Employment, Government of Tamil Nadu. Even after three years,

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since there was no response, at the instance of the workman, Government of Tamil Nadu issued a recovery certificate as per Section 33-C(1) of the Act on 19.10.2005 and the District Collector was asked to execute the order of recovery, who, in turn, directed the Tahsildar, Coimbatore (North) to take appropriate action. Since no effective steps were taken by the Collector/Tahsildar, the workman was constrained to approach this Court by way of Writ Petition No.10240 of 2006 and this Court by order dated 13.04.2006, directed the Tahsildar, Coimbatore (North) to take appropriate action to recover the amount pursuant to the recovery certificate issued by the Government within a period of 10 weeks from the date of receipt of a copy of the said order.

12. The decision of the Hon'ble Supreme Court in K.M.E. Union vs. Birla Cotton Spinning & Weaving Mills Ltd., 2005 LAB.I.C. 1604 (cited supra) makes it clear that (i) if there is any procedural illegality or mistake, which would affect the award, the petition for recall or review is maintainable; and (ii) if one of the parties to the proceedings, who had already been given full opportunity, wants to reopen the case on merits, recall or review is not maintainable.

13. In the light of the conduct of the Management and of the fact that award has been passed twice and published in the Government gazette on two occasions and of the fact that even after specific direction by the Government, amount was not paid by the Management and necessary coercive steps were taken to recover the same through the District Collector/Tahsildar, I am satisfied that in the facts and circumstances of the case, the review petitions filed by the Management disputing the award of the Labour Court on merits, are not permissible. Consequently, office note of the Labour Court doubting the maintainability of the review petitions is accepted. Both the revisions fail and are accordingly dismissed. No costs. Consequently, connected CMPs., are also dismissed.

Sd/-
Asst. Registrar.

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To

The Labour Court
Coimbatore.

1 cc to Mr.R. Neelakandan, Advocate, Sr. 42560

C.R.P.(PD)Nos.446&447/06

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